

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

368

No. 14,308

*United States Court of Appeals
For the
District of Columbia Circuit*

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Joseph W. Stewart
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AEM, INC., t/a S. GROOME EARECKSON,

Appellant,

VS.

IDA H. ECKE, et al.,

369

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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(i)

APPELLANT'S STATEMENT OF QUESTION PRESENTED

Is employee who voluntarily gave up her job for reasons which would not permit her to draw unemployment compensation during a penalty period become entitled to receive such unemployment compensation from employer's reserve after such penalty period had expired on theory that she has used due diligence in trying to obtain other employment when the employer has made a continuing offer of identical employment to such employee?

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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

Cross appeals were taken by appellant and appellee, Ida H. Ecke, to the District Unemployment Compensation Board from a decision of an Appeals Examiner. Subsequently, and pursuant to the provisions of Section 12 of the District of Columbia Unemployment Compensation Act, cross appeals were filed by the said parties in the United States District Court for the District of Columbia from the decision of the District Unemployment Compensation Board which took the form of a complaint filed by the Appellee, Ida H. Ecke, against appellant and the District Unemployment Compensation Board to which appellant answered and filed a cross claim against Appellees. There being no issue of fact

cross motions for summary judgment were filed on which the United States District Court for the District of Columbia granted judgment sustaining the decision of the District Unemployment Compensation Board. This appeal is taken from such judgment against appellant.

STATEMENT OF THE CASE

Appellee, Ida H. Ecke, hereinafter referred to for convenience as Ecke, was employed by Appellant, AEM, INC., doing business as S. Groome Eareckson, a rug repair and servicing company, hereinafter referred to for convenience as Eareckson, as a seamstress, by the hour and on a call basis. Ecke continued to work for Eareckson until June 12, 1955, at which time it announced to its employees, including Ecke, that it would commence to operate an open shop but that the conditions of employment would be the same as they had been in the past and that all of its employees were free to remain in their various jobs or to leave as each might elect. Ecke promptly elected to leave. She then applied for unemployment compensation and because the same would be paid her out of Eareckson's reserve it was notified of the order allowing such compensation and in accordance with the prescribed procedure Eareckson promptly appealed from such order. Subsequently two consecutive hearings were held before the Appeals Examiner of the District Unemployment Compensation Board, hereinafter referred to for convenience as the Board, which resulted in a decision by the Appeals Examiner denying compensation to Ecke for a period of five weeks on the ground that she was not available for employment because she had not actively sought work during that period but granting her compensation thereafter ruling that she was not disqualified from receiving compensation on the ground of voluntary quitting her most recent employment. Both Ecke and Eareckson appealed to the Board, Ecke claiming that she had actively sought employment and Eareckson claiming that her leaving Eareckson's employment was voluntary under Section 10 of the District of Columbia Unemployment Compensation Act and

disqualified her from receiving unemployment compensation. The record will show that prior to the hearings Eareckson had made a written offer of employment to Ecke and subsequent thereto as well as at the hearings and in its pleadings filed in the United States District Court Eareckson had made continued offers of the same employment which Ecke had previously held with Eareckson. (J. A. P. 5, lines 4, 5, 6, 7 & 8, P. 18, P. 44 and P. 50).

The Board (Page 49 et seq. J. A.) rendered its decision on the two appeals to the effect that under Section 10(d)(3) of the District of Columbia Unemployment Compensation Act, hereinafter referred to as the Act, leaving her employment because her employer operated an open shop even though by continuing her employment she would subject herself to possible disciplinary action by her union, constituted a voluntary leaving which would disqualify Ecke from receiving compensation. This decision was based on an exhaustive review of the law as developed in a number of jurisdictions, in eminent opinions, and will probably be thoroughly discussed in connection with the appeal filed by Ecke in No. 14, 307. Accordingly Ecke was disqualified from receiving benefits from June 12, 1955 through July 16, 1955, a total sum of \$150.00. As to the question of whether or not Ecke was available for work and eligible for benefits after July 16, 1955, the Board ruled that in view of a transit strike which was then in progress Ecke had exercised due diligence in seeking employment and was entitled to receive compensation by reason thereof. There followed the suit in the United States District Court for the District of Columbia by Ecke and the cross-claim by Eareckson in the nature of cross appeals on the two questions which resulted in the judgment appealed from.

STATEMENT OF POINTS

Assuming that this Court will sustain the Board in its decision that Ecke's resignation from Eareckson's employment was voluntary under Section 10 of the Act, and she was therefore disqualified from receiving compensation by reason thereof, all of which will be decided

in Appeal No. 14, 307, then Appellant cannot reconcile the inconsistent finding and decision of the Board allowing Ecke any compensation. If Ecke could not legally leave her employment and draw compensation then in like manner she could not refuse such employment and draw compensation from the employer's reserve who is offering the employment.

ARGUMENT

The Board found as a matter of fact and law that when Ecke quit her employment with Eareckson she did so voluntarily and therefore under the provisions of Section 10(a) of the Act was disqualified from receiving compensation. The Board also had testimony before it, which was apparently undisputed, that Eareckson at all times contended he had a job open for Ecke and that the Claimant (Ecke) was free to remain with the employer but did not do so for fear of disciplinary action by her union. (Page 50 J. A.) There is ample evidence in the record that Eareckson had continually tendered her job to Ecke which she refused to accept. On what basis therefore is Ecke entitled to receive any compensation from Eareckson's or any account or reserve so long as there is employment of the type in which she had been employed prior to her quitting available to her? Under Section 10 of the Act an employee cannot refuse suitable employment and be qualified for compensation. While it is true that the provisions of Section 10(c) of the Act provides periodic periods of disqualification, it also places a duty on the Board to direct the employee to available employment and places a similar duty on the claimant to accept known employment. In this case there is no question that the job with Eareckson was constantly and continuously available to Ecke, and both Ecke and the Board knew this, regardless of whether such offers were written on prescribed forms or tendered at hearings and in pleadings and by letter. The fact remains that if Ecke was disqualified from receiving compensation by reason of her voluntary leaving the employment of Eareckson she was equally disqualified by reason of

her continued refusal to accept such employment, constantly available to her.

There is involved in this appeal and the question before the Court a far greater principle than the payment out of appellant's reserve of several hundred dollars compensation. While it is true that for practical purposes the payment of such funds would help to deplete appellant's reserve so as to result in an increase in the percentage of appellant's unemployment compensation contributions, the question is one which could cause the loss of appreciation of an important segment of the population, industry and management, in the whole social security structure. The fact appears to be that the entire background of this and its companion appeal is not one which merely involves an employee seeking compensation but is a battle undertaken by a labor union to create a weapon for the promotion of its interests out of legislation, intended and accepted by both capital and labor, as a relief measure for the needy and not the greedy. The basic purpose of unemployment compensation, and indeed a worthy one, is to make distress funds available to those who genuinely cannot obtain employment. If employment, suitable to the employee, is available then certainly both the employee and the administrator should favor the employment rather than the dole. Capital and management which are taxed the huge sums of money comprising the unemployment compensation reserves could certainly have reason to complain and exercise resentment if such funds were used to promote union activity. While it is not intended that this brief be an indictment of the union, which has certainly contributed in many ways to the greatness of our Country, nevertheless, it is well known that controversies continually arise between capital and labor, in which both sides are often wrong, and both would necessarily resent use of social security funds or laws as weapons for the other. Legislation is often enacted to regulate the relations between capital and labor and are appreciated by sound thinking people. Social security legislation is not intended for such regulation. In this case if the employee may refuse employment from the

employer because it is an open shop, and for no other reason, and still be qualified to receive compensation from the employer's reserve, the compensation then becomes a tool which can be used to force the employer into a closed shop. It is contrary to the principles of free enterprise to make available the employer's own funds with which to cause him injury.

As appellant stated in his memorandum to the District Court (page 12 J. A.), how diligent can a person be in a search for employment when such person refuses employment of the same nature and under the same conditions as she had when she terminated her employment? The inconsistency of the Board's decision and its subsequent affirmance by the District Court results in a frustration which leaves an employer wondering if the Act was created to alleviate unemployment, promote the power of unions, or place a premium upon laziness.

CONCLUSION

Appellant respectfully submits that on the facts and on the provisions of the Act, the judgment of the United States District Court affirming that part of the Board's decision from which Eareckson appealed should be reversed with instructions to restore to appellant's reserve such funds which had been paid therefrom to appellee, Ecke, pursuant to the decision of the Board or the Board's hearing officers.

Respectfully submitted,

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